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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,538	09/08/2003	Richard B. Klein	LYNK.107725	9900
5251	7590	05/12/2004	EXAMINER	
SHOOK, HARDY & BACON LLP			NOVOSAD, JENNIFER ELEANORE	
2555 GRAND BLVD			ART UNIT	
KANSAS CITY,, MO 64108			PAPER NUMBER	

3634

DATE MAILED: 05/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/657,538

Applicant(s)

KLEIN ET AL.

Examiner

Jennifer E. Novosad

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION***Priority***

It is noted that this application appears to claim subject matter disclosed in prior Application No. 09/641,323, filed August 18, 2000. *However*, in line 3 of paragraph [0002] of the specification, Application No. 09/641,794, is listed. It appears that "09/761,794, filed August 19, 1999" should in fact be changed to --09/641,323, filed August 18, 2000--. *Also*, the current status of all nonprovisional parent applications referenced should be included. *Thus*, --now U.S. Patent No. 6,637,603,-- should be inserted before "entitled" in line 2 of paragraph [0002].

Abstract

Applicant is reminded of the proper content of an abstract of the disclosure. A patent abstract is a concise statement of the technical disclosure of the patent and should include that which is new in the art to which the invention pertains. If the patent is of a basic nature, the entire technical disclosure may be new in the art, and the abstract should be directed to the entire disclosure. If the patent is in the nature of an improvement in an old apparatus, process, product, or composition, the abstract should include the technical disclosure of the improvement. If the new technical disclosure involves modifications or alternatives, the abstract should mention by way of example the preferred modification or alternative. The abstract should not refer to purported merits or speculative applications of the invention and should not compare the invention with the prior art.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "said tabs provide a barrier against lateral movement of shoes positioned on said shoe rack" (in the last two lines) renders the claim indefinite since applicants improperly seek to link positively claimed subject matter, i.e., the tabs, to functionally recited subject matter, i.e., the shoes, through the positive recitation "provide". *To correct this*, it is suggested that --are adapted to-- be inserted before "provide" (in the second to last line).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Design '225 (U.S. Design Patent No. Des. 381,225 to Malik).

Design '225 shows a shoe rack for hanging on an upright surface (see Figure 1) comprising first (vertically extending longitudinal element on the left side of Figure 1) and second (vertically extending longitudinal element on the right side of Figure 1) opposed side

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frame members; each side frame member having a main body section and a plurality of support arms (see Figure 6) projecting outwardly therefrom; each support arm has opposite ends (one end is at the extreme left side of Figure 6 where the arm meets the vertical element and the other end is at the portion of the arm past the circular portion at the extreme right side of Figure 6) and at least one tab (see Figure 6, the tab is the upper half of the circular segment that meets the substantially horizontally extending support arm) extending upwardly therefrom at a location between the opposite ends whereby the tabs are adapted to provide a barrier against lateral movement of items, i.e., shoes positioned on the rack, i.e., since shoes would be placed on the bars between the side frame members, the first element of the shoe rack that the shoes would come in contact with when the shoes are moved laterally (left to right in Figure 1) would be the circular element (socket) and thus the tab which has been defined as the upper portion of the circular element and thereby the tab is considered to provide a barrier; and a plurality of shoe retaining bars (see Figure 1) extending between the side frame members.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Whitehead *et al.* '105 (U.S. Patent No. 5,871,105).

Whitehead *et al.* '105 disclose a rack for hanging on an upright surface comprising first (left side of Figure 1) and second (right side of Figure 1) opposed side frame members; each side frame member having a main body section (e.g., right side of Figure 3 which comprises the two

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vertical segments with diagonal elements therebetween) and a plurality of support arms (i.e., a first arm includes the horizontal elements at the top of Figure 3, e.g., above 70 and to the right of element 104, and a second arm includes the horizontal elements in the middle of Figure 3, e.g., including 108 and the element to the left thereof) projecting outwardly from the main body; each support arm has opposite ends and at least one tab (i.e., the first arm includes a tab which is defined by the upper half of element 104 in Figure 3 or the vertical segment in the top middle portion of Figure , and the second arm includes a tab which is defined by the upper half of element 108 or the upper half of element 103 in Figure 3) extending upwardly therefrom at a location between the opposite ends whereby the tabs are adapted to provide a barrier against lateral movement of items, i.e., when items such as 200 are placed in the rack they are placed on the bars (24, 26, etc.) between the side frame members, one of the first elements of the rack that the item would come in contact with when the item is moved laterally (left to right in Figure 1) would be the circular elements and thus the tabs which have been defined as the upper portions of the circular elements and thereby the tab is considered to provide a barrier; and a plurality of shoe retaining bars (24, 26, 28, etc.) extending between the side frame members.

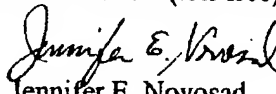
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer E. Novosad whose telephone number is (703)-305-2872. The examiner can normally be reached on Monday-Thursday, 5:30am-4:00pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on (703)-308-2686. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jennifer E. Novosad
Primary Examiner
Art Unit 3634

Jennifer E. Novosad/jen
March 12, 2004